IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. State of Rajasthan Vs. Nawal Singh & Others
(D.B. Criminal Appeal No.181/2004)

2. Nawal Singh & Another Vs. State of Raj.
(D.B. Criminal Appeal No.1536/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 20-10-2003 in Sessions Case No.113/2001 passed by Shri Banshi Mohan Chayal, RHJS, Additional Sessions Judge (Fast Track) No.2 Dholpur.

Date of Judgment: July 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. N.A.Naqvi, for the appellants and accused respondents.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Naval Singh and Bhagwan Singh, appellants herein, along with co-accused Smt.Prem Bai, were put to trial before learned Additional Sessions Judge (Fast Track) No.2 Dholpur, who vide judgment dated October 20, 2003 while acquitting co-accused Prem Bai, convicted and sentenced the appellants as under:-

U/s.498A IPC:
Both to suffer simple imprisonment for two years and fine of Rs.100/-, in default to further suffer fifteen days imprisonment.

U/s.304-B IPC:
Both to suffer imprisonment for ten years.
Sentences were ordered to run concurrently.

Being aggrieved by the aforesaid finding instant appeals have been preferred.

2. It is the prosecution case that on December 7, 2000 the informant Suraj Pal (Pw.15) submitted a written report (Ex.P-7) to SHO Police Station Kolari in connection with the death of his married daughter Mangli in abnormal circumstances on December 6, 2000. It was stated in the report that Mangli was married to Naval Singh on April 28, 1998 and she was subjected to cruelty in connection with demand of dowry. On that report case was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Dholpur. Charges under sections 498A, 304B in the alternative 302 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 CrPC, the accused claimed innocence. Two witnesses in support of defence were examined. Learned trial Judge on hearing final submissions while acquitting co-accused convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. As per Post Mortem Report (Ex.P-4) following ante mortem injuries were found on the dead body:-

1. Bruise 1cm x ½ cm over left zygomatic region
string mark size 1½ cm broad
extending from anterior aspect of neck at the level of thyroid cartilage to middle back of neck encircle whole of neck.

In the opinion of Dr. Than Singh (Pw.5) the cause of death was strangulation leading asphyxia and shock.

5. Learned counsel for the appellants made following submissions:-

(i) The prosecution failed to prove the demand of dowry.
(ii) At the time of incident Bhagwan Singh was at the field and Nawal Singh was out of station.
(iii) Deceased committed suicide and the prosecution failed to prove that she was ever treated cruelly.
(iv) The SDM Dholpur conducted inquiry under section 174 CrPC but the prosecution failed examine the said SDM.
(v) There were two versions of the incident and it is well settled that version favourable to the accused ought to have been taken to be true.

6. Coming to the evidence adduced at the trial we notice that Mangli died within three years of her marriage under abnormal circumstances. Conjoint reading of statements of Lakhan Singh (Pw.4), Kalawati (Pw.9) and Het Ram (Pw.10) demonstrates that appellant Naval Singh and Bhagwan Singh used to harass her in connection with demand of dowry. We however notice that these witnesses did not name Prema in their earlier statements recorded by the police. It was only after their `Titamba Bayan' that the name of Prema was added.

7. The expression `dowry' is defined by Section 2 of the Dowry Prohibition Act,1961 (for short `the Act'), as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person" at or before or after the marriage as consideration for the marriage of the said parties. The act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words "as consideration for the marriage" have been omitted and substituted by the words "in connection with the marriage". Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

8. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal Vs. Anupam (2004)3 SCC 199, indicated thus:-

(Para 14)

> "The definition of the term "dowry" under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage".

9. Interpreting the words "in connection with the marriage of the said parties", the Apex court in Satvir Singh Vs. State of Punjab (2001)8 SCC 633, propounded as under:-

> "The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act,1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".
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> (Emphasis supplied)

10. The word "agreement" referred in Section 2 has also been considered in Pawan Kumar Vs. State of Haryana (1998)3 SCC 309, by their Lordships of Supreme Court and it was observed as under:-

(Para 16)

> "Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act,1961 has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or talking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry."

11. That takes me to the question as to whether the appellants have

committed the dowry death of Laxmi? Section 113-B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

12. Analysing the words `soon before her death their Lordships of the Supreme Court in Kamesh Panjiyar Vs. State of Bihar (2005)2 SCC 388, held as under:-

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. A reference to the expression "soon before" used in Section 114 illustration (a) of the Evidence Act is relevant. The determination of the period which can come within the term "soon before" under section 114 illustration (a) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There

must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

(Emphasis supplied)

13. In K.Prema S.Rao Vs. Yadla Srinivasa Rao (AIR 2003 SC 11) their Lordships of Supreme Court examined the words `soon before her death' and observed as under:-

> "To attract the provisions of S.304-B, IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment `in connection with the demand for dowry'. There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as "pasupukumuma". The harassment or cruelty meted out to the deceased wife by the husband after the marriage to force her to transfer the land in his name was `not in connection with any demand for dowry'. One of the main ingredients of the offence of "demand of dowry" being absent in this case, the accused could not be said to have committed offence under S.304-B."

14. From the material on record we are satisfied that charges under sections 304B and 498A IPC have been established beyond a reasonable doubt. However looking to the fact that on the date of incident Naval Singh was teenager and Bhagwan Singh had crossed the age of 62 years, the ends of justice would be served in imposing lesser sentence.

15. For the reasons aforementioned, we dispose of instant matters in the following terms:-

(i) We partly allow the appeal and while maintaining conviction of appellants Naval Singh and Bhagwan Singh under section

304B IPC we reduce the sentence from 10 years rigorous imprisonment to 7 years rigorous imprisonment. We however confirm the conviction and sentence awarded to appellants under section 498A IPC.

(ii) We dismiss the appeal preferred by the State of Rajasthan.

(iii) The impugned judgment of trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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